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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION

11 SUMMIT ENTERTAINMENT, LLC,  
12 a Delaware limited liability company,

13 Plaintiff,

14 v.

15 BECKETT MEDIA, LLC., a Delaware  
Corporation, and Does 1-10, inclusive,

16 Defendants.

Case No. CV09-8161 PSG (MANx)

**ORDER RE: STIPULATED  
PROTECTIVE ORDER**

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19 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on  
20 the parties Stipulated Protective Order, filed on July 7, 2010, the terms of the  
21 Stipulated Protective Order are adopted as a protective order of this Court except to  
22 the extent, as set forth below, that those terms have been modified by the Court's  
23 amendment of Paragraphs 6(b), 7(c), and 12 of the Stipulated Protective Order.

24  
25 The parties are expressly cautioned that the designation of any information,  
26 document, or thing as "Confidential" or "Confidential – Outside Counsel Only"  
27 does not, in and of itself, create any entitlement to file such information, document,  
28

1 or thing, in whole or in part, under seal. Accordingly, reference to this Protective  
2 Order or to the parties' designation of any information, document, or thing as  
3 "Confidential" or "Confidential – Outside Counsel Only" is wholly insufficient to  
4 warrant a filing under seal.

5  
6 There is a strong presumption that the public has a right of access to judicial  
7 proceedings and records in civil cases. In connection with non-dispositive motions,  
8 good cause must be shown to support a filing under seal. The parties' mere  
9 designation of any information, document, or thing as "Confidential" or  
10 "Confidential – Outside Counsel Only" does not -- without the submission of  
11 competent evidence, in the form of a declaration or declarations, establishing that  
12 the material sought to be filed under seal qualifies as confidential, privileged, or  
13 otherwise protectible -- constitute good cause.

14  
15 Further, if sealing is requested in connection with a dispositive motion or  
16 trial, then compelling reasons, as opposed to good cause, for the sealing must be  
17 shown, and the relief sought shall be narrowly tailored to serve the specific interest  
18 to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th  
19 Cir. 2010). For each type of information, document, or thing sought to be filed or  
20 introduced under seal in connection with a dispositive motion or trial, the party  
21 seeking protection must articulate compelling reasons, supported by specific facts  
22 and legal justification, for the requested sealing order. Again, competent evidence  
23 supporting the application to file documents under seal must be provided by  
24 declaration.

25  
26 Any document that is not confidential, privileged, or otherwise protectible in  
27 its entirety will not be filed under seal if the confidential portions can be redacted.  
28 If documents can be redacted, then a redacted version for public viewing, omitting

1 only the confidential, privileged, or otherwise protectible portions of the document,  
2 shall be filed. Any application that seeks to file documents under seal in their  
3 entirety should include an explanation of why redaction is not feasible.

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5 **TERMS OF STIPULATED PROTECTIVE ORDER**

6  
7 1. Any confidential information or documents produced by or on behalf  
8 of any party or non-party as part of discovery in this action may be designated by  
9 the producing party(ies) as “Confidential” or “Confidential – Outside Counsel  
10 Only” (referred to herein as “Outside Counsel Only”). As a general guideline, any  
11 information that is publicly available should not be designated as “Confidential” or  
12 “Outside Counsel Only.” A document should be designated “Confidential” when it  
13 contains or reflects confidential business information, relating to but not limited to  
14 information, which the disclosing party or non-party believes in good faith  
15 contains, constitutes or reveals confidential commercial information, non-public  
16 financial information relating to pricing, gross revenue and profits for products, or  
17 other information of a confidential, proprietary, private or personal nature.

18  
19 2. Information or documents designated “Outside Counsel Only” shall be  
20 limited to trade secrets or other confidential commercial information, including  
21 without limitation information that the disclosing party or non-party believes in  
22 good faith will result in competitive disadvantage or harm if disclosed to another  
23 party or third party to this action, and shall include, without limitation, marketing  
24 plans or strategies, business plans, pricing plans, strategic plans, license agreements  
25 or negotiations, distribution agreements, manufacturing agreements, manufacturing  
26 processes, engineering and manufacturing drawings, employee files,  
27 merchandising, research and development of products and technical matters not yet  
28 released or sold, financial information or projections, including, without limitation,

1 budgets, net worth, identity of shareholders, or other documents relating to total  
2 revenue earned, and asset information that is not public knowledge.

3  
4 3. Information designated “Confidential” and “Outside Counsel Only”  
5 may be used only in connection with this proceeding, and not for any other purpose.  
6 Such information may not be disclosed to anyone except as provided in this  
7 Protective Order.

8  
9 4. Any party or non-party wishing to come within the provisions of this  
10 Protective Order may designate in writing the documents (as defined in Fed. R. Civ.  
11 P. 34 and Fed. R. Evid. 1001) or portions thereof that it considers confidential at the  
12 time the documents are produced. Each page of the document must be marked  
13 “Confidential” or “Outside Counsel Only” by the producing party, and any  
14 confidential documents exchanged prior to this Protective Order being entered by  
15 the Court shall, within a reasonable time hereafter, be so marked on each such page,  
16 if such markings do not include every such page. It is the intent of the parties that  
17 each document previously designated as “Confidential” and “Outside Counsel  
18 Only” and transmitted to the respective other party, including any such documents  
19 and information exchanged for settlement purposes, are to be covered by this  
20 Protective Order. “Confidential” and “Outside Counsel Only” documents or things  
21 that cannot be reasonably labeled pursuant to this paragraph shall be so designated  
22 by the producing party by informing the receiving party in writing.

23  
24 5. In the instance of deposition testimony, the witness under deposition or  
25 his counsel shall invoke the provisions of this Protective Order in a timely manner  
26 and designate the level of restriction. During the deposition, parties shall be  
27 excluded from testimony designated “Outside Counsel Only.” The witness under  
28 deposition or his counsel shall have the right, within fifteen days of receiving a

1 transcript of the deposition, to designate, or change, the confidentiality designation  
2 of the transcript or portions thereof. For depositions with some confidential and  
3 some non-confidential documents or testimony, a separate confidential transcript,  
4 apart from the usual transcript, shall be prepared by the court reporter. Counsel for  
5 the party asserting that certain documents or testimony is confidential shall  
6 endeavor to characterize the level of confidentiality for the confidential material or  
7 testimony during the deposition.

8  
9 6. Any documents, discovery responses, or deposition transcripts  
10 stamped or marked "Outside Counsel Only," as well as any copies or excerpts  
11 thereof, or analyses or reports that pertain thereto, and any deposition testimony or  
12 portion thereof marked as "Outside Counsel Only" may be made available only to:

13 a. Attorneys of record for the receiving party and employees of  
14 such attorneys on a need to know basis;

15 b. Judges, law clerks, and other personnel of the Court in which  
16 this proceeding is pending;

17 c. Independent experts retained by the attorneys for purposes of the  
18 litigation that are not directly associated with a party, and whom the receiving party  
19 identifies to the producing party ten days prior to disclosure to such expert;

20 d. Court reporters and their staff that are required to transcribe  
21 testimony; and

22 e. Outside litigation support vendors, including commercial  
23 photocopying vendors, scanning services vendors, coders, and keyboard operators.

24  
25 Notwithstanding the provisions of Paragraph 6, specifically identified  
26 information, documents, testimony, or other confidential materials marked "Outside  
27 Counsel Only" may be disclosed to principals or general counsel of the receiving  
28 party, provided the disclosing party or its counsel so authorizes in writing, and only

1 in the manner and to the extent so authorized. The parties recognize that the  
2 disclosure of such confidential material to the principals or general counsel of the  
3 parties may be critical to the ability to proceed in this case and analyze and  
4 participate in settlement discussions. For this reason, the parties shall not  
5 unreasonably withhold their consent under this Paragraph 6.

6  
7 7. Any documents, discovery responses, or deposition transcripts  
8 stamped "Confidential," as well as any copies or excerpts thereof, or analyses or  
9 reports that pertain thereto, and any deposition testimony or portion thereof marked  
10 as "Confidential," may be made available only to:

- 11 a. Representatives of the parties on a need to know basis;
- 12 b. Attorneys of record for the receiving party and employees of  
13 such attorneys on a need to know basis;
- 14 c. Judges, law clerks, and other personnel of the Court in which  
15 this proceeding is pending;
- 16 d. Independent experts retained by the attorneys for purposes of the  
17 litigation that are not directly associated with a party, and whom the receiving party  
18 identifies to the producing party seven days prior to disclosure to such expert;
- 19 e. Court reporters and their staff that are required to transcribe  
20 testimony; and
- 21 f. Outside litigation support vendors, including commercial  
22 photocopying vendors, scanning services vendors, coders, and keyboard operators.

23  
24 8. Written notice of intention to provide information or documents to  
25 experts pursuant to Paragraphs 6(c) and 7(d), shall be provided by facsimile or  
26 email seven days before the intended disclosure and shall specify the identity of the  
27 individual(s) to whom the intended disclosure will be made, and that person's  
28 occupation and employer. If there is a written objection within the seven-day

1 period and the objection is not resolved between counsel, the party seeking  
2 disclosure shall not disclose the information or documents, but shall have the right  
3 to bring the dispute before the Court for resolution. The parties shall not  
4 unreasonably object to the disclosure of information and documents to experts  
5 pursuant to Paragraph 6(c) and 7(d). The party objecting to the disclosure shall  
6 have the burden of showing why the information or documents should not be  
7 disclosed to the identified expert. The parties further agree that an expert whose  
8 identity is disclosed pursuant to this paragraph cannot be deposed regarding any  
9 subject related to this litigation, unless the expert has been designated as a testifying  
10 expert by the retaining party, and then in a manner consistent with the Federal  
11 Rules of Civil Procedure governing expert discovery.

12  
13 9. For purposes of this Protective Order, an expert witness shall not be  
14 deemed to be “independent” if he is (a) a party to this litigation, or an officer,  
15 shareholder, owner, manager, partner, distributor, seller, advertiser, independent  
16 contractor, affiliate, director, employee, former employee or contractor, or relative  
17 of a party to this litigation, or a party’s parent, subsidiary, predecessor-in-interest,  
18 successor-in-interest, related entity, or affiliate; or (b) an officer, shareholder,  
19 owner, manager, partner, distributor, seller, advertiser, independent contractor,  
20 affiliate, director, employee, former employee or contractor, or relative of a direct  
21 competitor to a party to this litigation, or the competitor’s parent, subsidiary,  
22 predecessor-in-interest, successor-in-interest, related entity, or affiliate.

23  
24 10. Each person permitted by the parties or their counsel to have access to  
25 designated information or documents under the terms of this Protective Order (other  
26 than the persons identified in Paragraphs 6(a), 6(b), 6(d), and 6(e) and 7(b), 7(c),  
27 7(e), and 7(f) shall, prior to being given such access, be provided with a copy of this  
28 Protective Order for review. Upon receiving this Protective Order, each person

1 shall sign a statement in the form of **Exhibit A** hereto indicating that he has read  
2 the Protective Order and agrees to comply with its terms.

3  
4 11. The restrictions set forth in this Protective Order shall not apply to  
5 information that is known to the receiving party or the public before the date of its  
6 transmission to the receiving party, or which becomes known to the public after the  
7 date of its transmission to the receiving party, provided that such information does  
8 not become publicly known by any act or omission of the receiving party, its  
9 employees, or its agents that would be in violation of this Protective Order.

10  
11 12. Any document or evidence that is designated as containing  
12 “Confidential” or “Outside Counsel Only” information and that a party wishes to  
13 file with the Court shall be presented to the Court along with a written application  
14 and proposed order for filing under seal according to the procedures set forth in  
15 Local Civil Rule 79-5.1. Furthermore, any such document or evidence so presented  
16 to the Court shall be placed in a sealed envelope or other appropriate sealed  
17 container marked on the outside with the title of the instant action, and a statement  
18 substantially in following form:

19 CONFIDENTIAL

20 This document is subject to a Protective Order issued by  
21 the Court and may not be examined or copied except in  
22 compliance with that Order.

23 Any other party shall be permitted to file a supporting or supplemental brief within  
24 four business days of the initial application or motion for filing under seal  
25 being filed.

26  
27 13. If, at any time during the preparation for trial, any party believes that  
28 any other party or non-party has improperly designated certain information as



1 “Confidential” or “Outside Counsel Only” or believes that it is necessary to  
2 disclose designated information to persons other than those permitted by this  
3 Protective Order, and the producing party does not agree to change the designation  
4 or to the further disclosure, the objecting party may make an appropriate motion to  
5 the Court requesting that the specifically identified documents, information and/or  
6 deposition testimony be excluded from the provisions of this Protective Order or be  
7 available to specified other persons. It shall be the burden of the party that makes  
8 the designation to demonstrate that the material or information at issue was  
9 properly designated. It shall be the burden of the party seeking the disclosure to  
10 persons other than those designated in this Protective Order to show that such  
11 disclosure is necessary.

12  
13 14. In the event that a party is served with a subpoena by any person, firm,  
14 corporation, or other entity that is not a party to this action, is not a signatory to this  
15 Protective Order or otherwise is not bound by this Protective Order, that seeks to  
16 compel production of “Confidential” or “Outside Counsel Only” information or  
17 documents, the party upon whom the subpoena is served shall give written notice of  
18 the subpoena to the party that has asserted that the information or documents  
19 subject to the subpoena are “Confidential” or “Outside Counsel Only.” The written  
20 notice required by this paragraph shall be given no later than seven days after  
21 receipt of the subpoena, or before the production date set forth in the subpoena,  
22 whichever is earlier. The party who designated the subject information or  
23 documents as “Confidential” or “Outside Counsel Only” shall have the  
24 responsibility to obtain an order from the Court quashing the subpoena, a protective  
25 order, and/or such other relief as will protect the confidential nature of the subject  
26 information or documents. If such a motion is filed before the requested production  
27 date, the party upon whom the subpoena, discovery request, or order is served shall  
28 not produce the subject information or documents requested in the subpoena,

1 discovery request, or order until after such time as the Court rules on the motion to  
2 quash the subpoena or motion for protective order. If an order quashing the  
3 subpoena or motion for protective order is obtained, the party upon whom the  
4 subpoena, discovery request, or order is served shall comply with the order. If no  
5 motion to quash or motion for protective order is filed before the scheduled  
6 production date set forth in the subpoena, discovery request, or order, or if the  
7 motion to quash the subpoena or motion for protective order is denied, the party  
8 upon whom the subpoena, discovery request, or order is served may comply with  
9 the same without being deemed to have violated this Protective Order.

10  
11 15. The Protective Order may be modified only in writing by the parties  
12 and approved by an order of the Court, or by motion to the Court.

13  
14 16. In the event that this case proceeds to trial, the parties shall take the  
15 necessary steps to maintain the confidentiality of the information or documents  
16 designated as "Confidential" or "Outside Counsel Only."

17  
18 17. Upon termination of this proceeding, unless the attorneys of record  
19 otherwise agree in writing, each party shall: (a) assemble and return all designated  
20 materials, including copies, to the person(s) and entity(ies) from whom the material  
21 was obtained, or (b) destroy all designated materials and provide the other party  
22 with written certification that such destruction was made. The attorney of record  
23 may retain one copy of any designated materials, to be kept confidentially, and  
24 retain all copies of designated materials containing attorney work product  
25 information.


26  
27 18. In the event any party discloses material containing confidential  
28 information, but that such party inadvertently did not designate as "Confidential" or

1 "Outside Counsel Only," the receiving party agrees, upon request by the disclosing  
2 party, to return the un-designated material promptly, for reproduction by the  
3 disclosing party with the appropriate confidentiality, or to mark the material  
4 directly with the confidentiality designation requested by the disclosing party.

5  
6 19. This Protective Order shall not prejudice the right of any party or non-  
7 party to oppose production of any information on the ground of attorney-client  
8 privilege, work product immunity, or any other protection provided under the law.

9  
10 **IT IS SO ORDERED.**

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12 Dated: October 6, 2010

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15 Margaret A. Nagle  
16 United States Magistrate Judge  
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**EXHIBIT A**

**CONFIDENTIALITY AGREEMENT FOR OTHERS**

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4 1. I have been asked by \_\_\_\_\_ or its counsel to receive  
5 and review certain materials or testimony that have been designated as  
6 “Confidential” or “Outside Counsel Only” within the terms of the Protective Order  
7 entered in the U.S. District Court, Central District of California, case entitled  
8 *Summit Entertainment, LLC v. Beckett Media, LLC*, Case No. CV09-8161 PSG  
9 (MANx).

10 2. I have read the aforementioned Protective Order, and agree to be  
11 bound by it.

12 3. I declare the foregoing is true under penalty of perjury under the laws  
13 of the United States of America.

14  
15 Dated: \_\_\_\_\_

16  
17 Name: \_\_\_\_\_  
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